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CALIFORNIA SPORTFISHING PROTECTION ALLIANCE and
STRAWBERRY CANYON STEWARDSHIP GROUP

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CALIFORNIA SPORTFISHING
PROTECTION ALLIANCE, a non-profit
corporation; STRAWBERRY CANYON
STEWARDSHIP GROUP, an
unincorporated association,

Plaintiffs,

vs.

STEVEN CHU, in his official capacity as
Director, Lawrence Berkeley National
Laboratory; LAWRENCE BERKELEY
NATIONAL LABORATORY, a federal
agency,

Defendants.

Case No. 3:08-cv-01963-VRW

**PLAINTIFFS' CASE MANAGEMENT
STATEMENT**

Conference: August 14, 2008
Time: 3:30 pm
Courtroom: 6

Plaintiffs California Sportfishing Protection Alliance and Strawberry Canyon Stewardship
Group (collectively "CSPA") submits the following Case Management Statement:

1. Jurisdiction and Service

The Court has subject matter jurisdiction over the parties and the subject matter of this action

1 pursuant to Section 505(a)(1)(A) of the federal Clean Water Act (the “Act”), 33 U.S.C. §
2 1365(a)(1)(A) and 28 U.S.C. § 1331 (an action arising under the laws of the United States).
3 Plaintiffs have not yet served defendants Steven Chu and Lawrence Berkeley National Laboratory in
4 order to facilitate the parties’ ongoing settlement negotiations. The deadline for service is August
5 12, 2008.

6 **2. Facts**

7 On or about January 7, 2008, CSPA provided Defendants a notice of Defendants’ violation
8 of the Act, alleging that Defendants violated the terms of the General National Pollutant Discharge
9 Elimination System (“NPDES”) Permit for Storm Water Discharges from Industrial Activity issued
10 by the California State Water Resources Control Board (“SWRCB”) at Defendants’ national
11 laboratory facility located in Berkeley, California. In that notice CSPA, indicated its intention to file
12 suit against Defendants, and contemporaneously provided such notice to the Administrator of the
13 United States Environmental Protection Agency (“EPA”), the Administrator of EPA Region IX, the
14 Executive Director of the State Water Resources Control Board (“State Board”), and to the
15 Executive Office of the Regional Water Quality Control Board, San Francisco Bay Region
16 (“Regional Board”).

17 After sixty days had passed since notice was served on the Defendants and the state and
18 federal agencies, CSPA filed its complaint alleging that Defendants’ Berkeley facility discharges
19 storm water into waters of the United States without applying certain requisite pollution control
20 technologies and which exceed certain water quality standards and benchmark levels established by
21 the EPA. CSPA also claims that Defendants failed to perform certain requirements of the NPDES
22 General Permit relating to the adequacy of its storm water pollution prevention plan and monitoring.
23 Based upon these allegations, CSPA seeks injunctive relief.

24 **3. Legal Issues**

25 Because CSPA has not yet served Defendants, it is not yet clear what, if any, legal issues
26 may arise. The points of law in this action concern the federal Clean Water Act. Section 301(a) of
27 the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into waters of the United
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1 States, unless such discharge is in compliance with various enumerated sections of the Act. Among
 2 other things, Section 301(a) prohibits discharges not authorized by, or in violation of, the terms of an
 3 NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342. Section 402(p) of the
 4 Act establishes a framework for regulating municipal and industrial storm water discharges under
 5 the NPDES program. 33 U.S.C. § 1342(p). States with approved NPDES permit programs are
 6 authorized by Section 402(p) to regulate industrial storm water discharges through individual
 7 permits issued to dischargers or through the issuance of a single, statewide general permit applicable
 8 to all industrial storm water dischargers. 33 U.S.C. § 1342(p).

9 Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Administrator of the U.S. EPA has
 10 authorized California's State Board to issue NPDES permits including general NPDES permits in
 11 California. The State Board elected to issue a statewide general permit for industrial storm water
 12 discharges. The State Board issued the General Permit on or about November 19, 1991, modified
 13 the General Permit on or about September 17, 1992, and reissued the General Permit on or about
 14 April 17, 1997, pursuant to Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p). In order to
 15 discharge storm water lawfully in California, industrial dischargers must comply with the terms of
 16 the General Permit or have obtained and complied with an individual NPDES permit. 33 U.S.C. §
 17 1311(a). CSPA claims that Defendants have not complied with the terms of this permit.

18 **4. Motions**

19 Plaintiffs have not filed any motions and do not anticipate filing any at this time.

20 **5. Amendment of Pleadings**

21 Defendants have not yet been served with the Complaint and the parties are presently
 22 engaged in settlement negotiations. At this time, CSPA does not intend to amend the Complaint.

23 **6. Evidence Preservation**

24 No steps have been taken to preserve evidence relevant to the issues reasonably evident in
 25 this action.

26 **7. Disclosures**

27 As Defendants have not been served, no initial disclosures have been made.

8. Discovery

No discovery has been taken in this action. Because plaintiffs believe that a settlement of the matter is imminent, they would request that the Court defer setting discovery deadlines until October 23, 2008, in order for the parties to focus their resources on completing a settlement.

9. Class Action

This action is not a class action.

10. Related Cases

There are no related cases or proceedings to this action.

11. Relief

CSPA seeks the following relief:

- a. Declare Defendants to have violated and to be in violation of the Act as alleged herein;
- b. Enjoin Defendants from discharging polluted storm water from the Facility unless authorized by the Permit;
- c. Enjoin Defendants from further violating the substantive and procedural requirements of the Permit;
- d. Order Defendants to immediately implement storm water pollution control and treatment technologies and measures that are equivalent to BAT or BCT and prevent pollutants in the Facility's storm water from contributing to violations of any water quality standards;
- e. Order Defendants to comply with the Permit's monitoring and reporting requirements, including ordering supplemental monitoring to compensate for past monitoring violations;
- f. Order Defendants to prepare a SWPPP consistent with the Permit's requirements and implement procedures to regularly review and update the SWPPP;
- g. Order Defendants to provide Plaintiffs with reports documenting the quality and quantity of their discharges to waters of the United States and their efforts to comply with the Act and the Court's orders;

1 h. Order Defendants to take appropriate actions to restore the quality of waters
2 impaired or adversely affected by their activities; and

3 i. Award Plaintiffs' costs (including reasonable investigative, attorney, witness,
4 compliance oversight, and consultant fees) as authorized by the Act, 33 U.S.C. § 1365(d).

5 **12. Settlement and ADR**

6 The parties are involved in settlement negotiations and are close to reaching an agreement.
7 No ADR efforts have been made to date, and there is no specific ADR plan for the case.

8 **13. Consent to Magistrate Judge For All Purposes**

9 CSPA will consent to have a magistrate judge conduct all further proceedings including trial
10 and entry of judgment.

11 **14. Other References**

12 This case is not suitable for reference to binding arbitration, a special master, or the Judicial
13 Panel on Multidistrict Litigation.

14 **15. Narrowing of Issues**

15 There are no issues that can be narrowed by agreement or by motion at the present time.
16 CSPA has no suggestions to expedite the presentation of evidence at trial, and has no request to
17 bifurcate issues, claims, or defenses.

18 **16. Expedited Schedule**

19 This is not the type of case that can be handled on an expedited basis with streamlined
20 procedures.

21 **17. Scheduling**

22 Because CSPA has not yet served Defendant, as agreed to by the parties, in order to facilitate
23 completion of the ongoing settlement negotiation, the parties have not yet discussed a discovery and
24 trial schedule for the litigation. Given the strong likelihood of settlement, CSPA, with the
25 agreement of Defendants, requests that the Court defer setting a schedule for the case and schedule a
26 second case management conference for October 23, 2008, by which date the parties either will have
27 perfected a settlement or had an opportunity to meet and confer and file a joint case management
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1 statement proposing a detailed schedule.

2 **18. Trial**

3 This case will be tried to the court and the expected length of the trial is four days.

4 **19. Disclosure of Non-party Interested Entities of Persons**

5 Plaintiffs filed their "Certification of Interested Entities or Persons" on August 4, 2008.

6 **20. Additional Matters**

7 CSPA requests that the court reschedule the date of the Case Management Conference to late
8 October 2008, allowing the parties enough time to reach a settlement agreement and submit such
9 agreement to the federal agencies (EPA and Department of Justice) for a mandatory 45-day review
10 period pursuant to 33 U.S.C. § 1365(c)(3).
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12 Dated: August 4, 2008

Respectfully submitted,

13 LOZEAU DRURY LLP
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15 By: /s/ Douglas J. Chermak

16 DOUGLAS J. CHERMAK
17 Attorneys for Plaintiffs
18 CALIFORNIA SPORTFISHING
19 PROTECTION ALLIANCE and
20 STRAWBERRY CANYON STEWARDSHIP
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